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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
National Communications System Petition for)
Rule Making)
)
The Development of Operational, Technical,)
and Spectrum Requirements for Meeting Fed-)
eral, State and Local Public Safety Agency)
Communication Requirements Through the)
Year 2010)

WT Docket No. 96-86

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To: The Commission

COMMENTS

BellSouth Corporation and BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby submit comments in response to the petition for rulemaking filed by the National Communications System ("NCS") requesting that the Commission adopt rules to authorize the provision of "priority access" to cellular spectrum. *See* Wireless Services; National Communications System Petition, DA 96-604, 61 Fed. Reg. 18538 (1996). Although BellSouth applauds NCS' attempt to ensure that cellular spectrum be available for national security/emergency preparedness, the communications needs of public safety and emergency personnel should not be addressed on a piecemeal basis. Accordingly, the need for a cellular priority access service ("CPAS") should be addressed in the Commission's ongoing proceeding to evaluate the communications needs of public safety agencies.¹

¹ *The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, Notice of Proposed Rule Making, FCC 96-155 (Apr. 10, 1996) ("Public Safety NPRM").

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I. IT IS PREMATURE TO ESTABLISH DEADLINES FOR IMPLEMENTING CELLULAR PRIORITY ACCESS SERVICES

NCS urges the Commission to adopt rules which will authorize the provision of “priority access” to cellular service for national security and emergency preparedness (NS/EP) purposes. Petition at 1-5. Under these rules, a system of prioritized use would be established whereby prioritized users would be permitted to place cellular calls before the general public. Petition at 10-14. According to NCS, CPAS is needed because wireless mobile communications are invaluable in disaster situations. Petition at 4. Rescue workers use cellular phones during emergency situations but, in many cases, are unable to use cellular communications effectively due to capacity limitations. As NCS points out, there generally is a surge in cellular communications in the aftermath of disasters such that cellular systems can not accommodate all calls. Thus, unless priority access is established, rescue workers may be prevented from communicating. Further, unless priority access rules are adopted, NCS argues that cellular providers may be precluded by Section 202 of the Communications Act from giving rescue workers priority access. Although BellSouth agrees that NCS has identified many critical concerns, these concerns should be addressed in the *Public Safety NPRM*.

A. CPAS Standards Must Be Developed Before Rules Are Adopted

Without question, emergency personnel should be able to communicate effectively in emergency situations. However, as NCS itself recognizes, “standards for cellular priority access are still in the development stage [and] no service provider is currently in a position to provide the priority access described herein.” Petition at 4-5. Although NCS claims that it should be possible for cellular providers to offer priority access by 1997, it offers no support for this prediction.

Petition at 5. In fact, BellSouth has been informed by its equipment vendors that CPAS-compatible equipment will not be available until 1998.

Further, NCS' statement that the latest version of TIA's Cellular Features Description provides a standard called Priority Access and Channel Assignment ("PACA") for establishing priority access is misleading. Petition at 5. PACA, the only cellular standard currently capable of supporting CPAS, has been adopted only for cellular systems using TDMA technology. Today's cellular systems, however, operate using analog, CDMA, or TDMA technology. Although parties have suggested that a similar standard be adopted for CDMA, the current TIA bulletin does not contain a CDMA priority access standard. Similarly, no such standard exists for analog cellular systems. Thus, PACA is inapplicable to most cellular systems.

Even though the provision of CPAS would be voluntary under the proposed rules, a cellular carrier must comply with the proposed rules if it wishes to provide CPAS. Because the proposed rules mandate the provision of CPAS according to PACA, non-TDMA carriers are arguably precluded from offering priority access. See Petition at 8. At a minimum, non-TDMA cellular licensees would be forced to develop interim CPAS technologies if they wish to provide priority access because priority access standards have not been adopted for such systems. A number of different "interim" solutions might be implemented while standards are being developed, but they would not be fully interoperable. A lack of interoperability would provide little improvement over present conditions, since emergency workers from different areas, with different equipment employing different CPAS technologies, would not be able to join forces in response to emergency conditions. Moreover, the interim solutions would become obsolete once uniform standards are

adopted. Further, interim solutions often result in "throw-away" technology which wastes valuable licensee resources which could otherwise be devoted to service innovation.

In sum, CPAS may be of little value in facilitating communications by emergency personnel. The proposed rules require the use of PACA, yet most cellular systems are not capable of supporting this standard. In fact, there may not be a TDMA cellular system in a particular market. Further, even if there were a TDMA system, CPAS may not be available in that market if the carrier has not chosen to offer CPAS. The Commission has proposed a number of other alternatives in WT Docket No. 96-86, however, which may lessen or eliminate the need for CPAS. Accordingly, the Commission should consider the need for priority access in that docket.

B. Once CPAS Standards Are Established, It Will Take Time For Vendors To Develop Equipment and Software Which Permit CPAS

Vendor development of equipment capable of providing priority services cannot be adopted until standards are set. Thus, even though PACA is contemplated by TIA for TDMA systems, equipment capable of providing PACA over TDMA systems is not yet available. Further, vendors cannot begin developing similar equipment for CDMA and analog systems until CPAS (or PACA) standards are adopted for those technologies.

The Commission traditionally has been reluctant to impose requirements which would force carriers to purchase new equipment before the life expectancy of existing equipment has run.² It would be inconsistent with this rationale to require cellular licensees that have just converted their systems from analog to digital to purchase replacement equipment in order to provide priority

² See *Public Safety NPRM* at ¶ 35; *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 96-196, ¶¶ 65-67 (Apr. 30, 1996).

access. Carriers should be encouraged to develop priority access systems that utilize existing equipment. Because the provision of cellular priority access is voluntary, more carriers will be willing to offer the service if they can do so at little expense. If PACA or a similar standard is required for providing priority access, cellular carriers may not offer the service if it necessitates the installation of new equipment. If, however, cellular carriers are given flexibility to offer priority access in any manner, carriers may be able to provide priority access without the need for expensive system upgrades. Thus, a single priority access standard, such as PACA, should not be mandated.

Further, even if CPAS standards were in place and equipment were available for the provision of such services by 1997, numerous other concerns caution against adopting CPAS requirements in the near future. During emergencies, rescue and other public safety personnel from many different areas converge in the disaster zone. For example, emergency personnel from all over the east coast and southeast assisted in disaster relief operations in South Florida after Hurricane Andrew. These workers used cellular phones from many different markets and operated as roamers. If CPAS were available at that time, the equipment for the home systems of all emergency personnel would have to operate on the same standards to work cohesively in the South Florida CPAS environment. Their home cellular carriers and the host carrier in the disaster area would have to have common standards for the exchange of billing and other information in order for CPAS to work.

Disaster relief efforts often cross cellular system boundaries, necessitating standards for intersystem call delivery and hand-off. Thus, IS-41 standards for intersystem CPAS operation must be adopted and a system must be put in place for administration of CPAS between carriers. Moreover, public safety and NS/EP equipment would need to be replaced. Current cellular phones,

even digital phones, are not capable of supporting PACA or CPAS. Thus, new equipment must be purchased or existing equipment modified before priority access could be implemented. Finally, other standards groups must develop: (1) a mechanism to ensure that a sufficient portion of cellular spectrum remains available to the general public during emergencies;³ and (2) a single, standardized access code which would permit a sender with appropriate permissions and authorizations to obtain priority access in an emergency.

C. CPAS Does Not Ensure That Calls Can Be Completed

Even if CPAS were technically and economically feasible, it does not ensure that calls placed by emergency personnel will be completed. CPAS addresses only “access.” In other words, CPAS would give emergency workers priority in obtaining a voice channel in the originating cell. It would not, however, ensure that a call could be completed. Obstacles to call completion include landline blocking conditions (for calls to the landline network) and insufficient channel capacity in the called party’s cell (for calls to other cellular phones). The latter constraint may actually be aggravated by CPAS, which would give emergency workers in a given cell originating priority access to voice channels, thereby depleting the availability of channels for terminating calls. The ability to originate calls that cannot be terminated clearly would not improve emergency communications. Thus, to accomplish NCS’ objective of ensuring the availability of emergency communications, the Commission must focus on both access and termination. Separate standards must be created which would give CPAS calls priority access to other networks, as well as in the terminating portion of the cellular network, so that calls can be completed.

³ See Petition at 11 n.8.

II. CMRS PRIORITY ACCESS ISSUES SHOULD BE ADDRESSED IN WT DOCKET NO. 96-86

The Commission should not adopt rules regarding the provision of emergency communications services in a piecemeal fashion. The Commission currently has two proceedings pending which address the provision of emergency communications services. It would be unwise to begin yet another proceeding to consider the issues raised by NCS before these other proceedings have been completed. Similarly, although BellSouth believes that any rules ultimately established to support wireless priority access services should apply to all carriers equally, this petition is not the appropriate forum to broaden NCS' proposal.⁴

In WT Docket No. 96-86, the Commission proposes a comprehensive evaluation of the wireless communications needs of public safety agencies.⁵ As part of this proceeding, the Commission recognizes the difficulty faced by emergency preparedness personnel and public safety agencies in responding to disasters. The FCC notes, however, that many of the communication problems faced by these entities are caused because each public safety agency "operates its own communications system on its own channels, using technologies that are incompatible with the equipment used by the other agencies."⁶ To facilitate emergency communications during emergencies and among various federal, state, and local public safety agencies, the Commission

⁴ See Petition at 3 n.4.

⁵ *The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, Notice of Proposed Rule Making, FCC 96-155 (Apr. 10, 1996).

⁶ *Public Safety NPRM* at ¶ 21. The perceived need for CPAS may be driven, in large part, by this lack of interoperability between the communications systems operated by various public safety agencies.

proposed to require interoperability between the communications systems of various public safety agencies.⁷

One interoperability option proposed by the Commission in WT Docket No. 96-86 was the designation of universal mutual aid channels that would be subject to a system of priorities similar to those proposed by NCS.⁸ Additionally, it is possible that a new public safety communications service will be developed as a result of this proceeding which will provide sufficient capacity to permit emergency personnel to communicate during disasters and lessen the need for priority access to CMRS spectrum.⁹ Thus, it would make little sense to adopt CPAS rules when the rules ultimately adopted in WT Docket No. 96-86 may mitigate the need for CPAS.¹⁰

⁷ *Public Safety NPRM* at ¶¶ 41-42.

⁸ *Public Safety NPRM* at ¶ 40.

⁹ BellSouth notes that CPAS would effectively preclude the general public from using their cellular phones in a disaster area. Thus, a cellular subscriber trapped in a building, for example, would be prevented from using its phone to request emergency assistance. If a new public safety communications service were developed, however, there may be no need to preempt cellular calls from the general public. Accordingly, the communications needs of emergency personnel would be satisfied without endangering the safety of the general public within a disaster area.

¹⁰ Additionally, the Commission is considering the adoption of rules which would require cellular carriers to provide priority to cellular 911 calls in another docket. *See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Notice of Proposed Rule Making*, 9 F.C.C.R. 6170 (1994). The proposed CPAS rules, however, do not contemplate priority access for 911 calls. Unless 911 calls are included in the CPAS priority scheme, 911 calls could block CPAS calls or *vice versa*. Accordingly, any CPAS rules should take into account and complement the 911 requirements under consideration in CC Docket No. 94-102.

III. THE COMMISSION SHOULD INSULATE CELLULAR CARRIERS FROM ANY LIABILITY ARISING FROM A CELLULAR PRIORITY ACCESS SYSTEM

Although NCS claims that there is no need for the Commission to address the liability issue for CPAS, BellSouth respectfully disagrees. *See* Petition at 10. NCS suggests that the provision of CPAS would be voluntary under its proposed rules. Petition at ii, 11. Uncertainty regarding the potential liability faced by a cellular carrier as a result of providing CPAS would discourage cellular carriers, however, from providing priority access. To ensure widespread availability of CPAS, if the proposed rules are adopted, the Commission should make clear that cellular carriers would not be liable for giving emergency personnel priority access *vis-a-vis* the general public.

Further, although the Commission decided not to adopt a specific liability exemption for the provision of priority access pursuant to the National Security Emergency Preparedness ("NSEP") Telecommunications Service Priority ("TSP") System rules,¹¹ a liability exemption should be adopted for CPAS. The NSEP TSP rules *require* priority treatment and, thus, the Commission found that a claimant asserting a violation of Section 202 must show that a carrier violated the TSP rules in order to prevail. The proposed CPAS rules, however, are *voluntary*. A carrier has no obligation to preempt a subscriber's call in favor of a call from emergency personnel. To ensure that carriers voluntarily providing CPAS are insulated from liability, the Commission should make clear that a carrier implementing CPAS will incur no liability from the provision of CPAS. In fact, a carrier takes no action to preempt calls from subscribers. Emergency personnel activate the priority access

¹¹ *See National Security Emergency Preparedness Telecommunications Service Priority System*, GN Docket No. 87-505, *Report and Order*, 3 F.C.C.R. 6650, 6658 (1988).

by sending a special access code that allows them to preempt other calls. Thus, the cellular carrier should not incur liability resulting from the actions of emergency personnel.

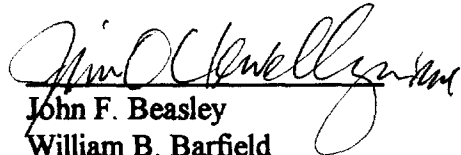
CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to incorporate the NCS petition into WT Docket No. 96-86, which may moot the need for CPAS. At a minimum, the Commission should defer from adopting specific cellular priority access requirements until standards have been adopted and the technology exists to make CPAS economically feasible.

Respectfully submitted,

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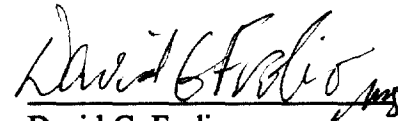
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